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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.  |  |  |
|--|-------------|----------------------|---------------------|-------------------|--|--|
| 10/516,344   | 11/21/2005  | Dirk Mertin          | LeA 36165           | 9502              |  |  |
| 71285  | 7590        | 03/24/2009           | EXAMINER            |                   |  |  |
| BAYER HEALTHCARE LLC<br>P.O.BOX 390<br>SHAWNEE MISSION, KS 66201 |             |                      |                     | DICKINSON, PAUL W |  |  |
| ART UNIT   |             | PAPER NUMBER         |                     |                   |  |  |
| 1618   |             |                      |                     |                   |  |  |
| MAIL DATE  |             | DELIVERY MODE        |                     |                   |  |  |
| 03/24/2009   |             | PAPER                |                     |                   |  |  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/516,344             | MERTIN ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | PAUL DICKINSON         | 1618                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 January 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1, 3 and 11-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1, 3 and 11-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

Applicant's arguments, filed 1/19/2009, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objects are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### ***Response to Arguments***

#### ***Claim Rejections - 35 USC § 103***

The rejection of claims 1, 3, 11-19 under 35 U.S.C. 103(a) as being unpatentable over US 5152986 ('986) in view of US 6323213 ('213) is maintained.

Applicant argues the following points: (1) The addition of thickeners in '986 is optional and several possible thickeners are disclosed. (2) The present invention has a gel-type 3-dimensional structure which helps to prevent sedimentation. Certain pseudoplastic gel formers (thickeners) would not provide adequate yield points and shear viscosity, i.e. proper stability to sedimentation, as in the present liquid invention. (3) Further, '986 teaches that the thickeners are added to make semi-solid preparations or oral pastes which teaches away from the present invention that includes water as the carrier.

Applicant's arguments have been fully considered but are not found persuasive. (1) It would have been obvious to add a thickener from the list recited by '986, such as xanthan gum, as this is one embodiment taught by the reference to afford

quinolonecarboxylic acid formulations with improved taste, high uptake and high tolerance levels in animals (see col 5, lines 5-13). (2) Applicant states that certain thickeners (pseudoplastic gel formers) would not provide adequate yield points and shear viscosity. This argument is unsupported by evidence, and is only an allegation of unexpected results. See MPEP § 716.02. (3) Regarding Applicant's statement that '986 teaches away from the claimed invention, liquid water is a preferred carrier of '986 (see col 5, lines 59-61). Although the recited thickeners are added so that the suspension may be administered as a semi-solid, a semi-solid is a highly viscous liquid. The Examiner notes that bentonites (a presently disclosed pseudoplastic gel former) may also be added to the formulation of '986 (with or without the presence of thickeners) as an auxiliary agent (see col 5, lines 46-52; col 6, lines 34-37).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DICKINSON whose telephone number is (571)270-3499. The examiner can normally be reached on Mon-Thurs 9:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric E Silverman/  
Examiner, Art Unit 1618

Paul Dickinson  
Examiner  
AU 1618

March 18, 2009